

# The Unfair Trading Practices Directive: a transposition and implementation guide

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# The Unfair Trading Practices Directive: a transposition and implementation guide

## Contents

How to use this guide .....	3
Introduction to unfair trading practices .....	3
What are the key features of the Directive?.....	4
What can you do?.....	8
Ensuring the effective transposition and implementation of the Directive .....	8
Advocating for national laws that improve on the minimum standards of the Directive .....	11
How should civil society organisations and other like-minded organisations engage with the legislative process? .....	14
Other policy areas to be aware of .....	15
Background information and resources .....	16
Annex 1: Suggested amendments .....	17
Annex 2: Timeline .....	19

## How to use this guide

This guide is for the use of civil society organisations, businesses and members of the public based in EU Member States that are working for greater fairness in agricultural supply chains.

This guide includes:

- An introduction to the Unfair Trading Practices Directive
- Guidance on monitoring the transposition and implementation of the Directive to ensure maximum effectiveness
- Guidance for where national law can improve on the minimum standards of the Directive
- Suggestions for how to engage with the legislative process at Member State-level
- How to use the Directive to stop unfair trading practices
- Other relevant policy areas to be aware of.

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## Introduction to unfair trading practices

### Unfairness in agricultural supply chains

The agriculture and food sector brings together businesses of hugely different shapes and sizes, from small-scale family farms to huge multinational enterprises. Large retailers and brands dominate the market, meaning that smaller suppliers are vulnerable to being treated unfairly.

This unfair treatment can include cancelling orders at the last minute and failing to pay invoices on time – practices that create insecure incomes and poverty among suppliers, and in particular those who are already the most vulnerable. Suppliers experiencing these kinds of buying practices, wherever they are in the world, may be forced to save by cutting their costs, and this may have implications for labour rights, food safety and environmental protections.

Research has consistently demonstrated that this kind of abuse is now normal in the European food sector: a 2011 survey found that 96% of EU food businesses had experienced unfair commercial practices.<sup>1</sup> Set against this, recent research demonstrates that Europeans overwhelmingly believe that it is important to strengthen the position of farmers in the supply chain.<sup>2</sup>

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<sup>1</sup> Survey conducted by DEDICATED on behalf of AIM and CIAA

<sup>2</sup> [https://ec.europa.eu/info/news/safe-sustainable-quality-citizens-share-their-views-eu-food-and-farming\\_en](https://ec.europa.eu/info/news/safe-sustainable-quality-citizens-share-their-views-eu-food-and-farming_en)

## The need for proper enforcement

Although the problem of unfair trading practices has been widely recognised for many years (at least as far back as a 2008 declaration of the European Parliament<sup>3</sup>), the European Union has been slow to develop and enforce binding solutions. There are various regulations in existence across the EU Member States, but this Directive is the first attempt to tackle unfair trading practices through a suitably designed and properly enforced law that applies across the EU Member States.

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## What are the key features of the Directive?

This section gives an overview of the main elements of this Directive, which is formally *the Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*.

### What is a Directive?

A Directive of the European Union must be transposed by each Member State into their national legislation within a certain timeframe. Member States must fully transpose the Directive, but also have the flexibility to go further by introducing more ambitious and comprehensive measures.

### The definition of an unfair trading practice?

The Directive defines unfair trading practices as: *'practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another'*.

The critical aspect is that unfair trading practices are unilaterally imposed on weaker trading parties, who are unable to find an alternative buyer and are therefore trapped in an unfair business relationship.

Article 3 of the Directive specifies which practices are considered to be unfair trading practices and are therefore banned. Ten practices are banned outright, whatever the circumstances:

1. Late payments: paying later than 30 days for perishable products
2. Late payments: paying later than 60 days for other agri-food products

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<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:184E:0023:0024:EN:PDF>

3. Cancelling of orders at short notice (less than 30 days)
4. Making unilateral changes to a supply agreement
5. Requiring payments from the supplier that are not related to the product
6. Requiring the supplier to pay for the deterioration or loss of a product once it has passed into the buyer's ownership
7. Refusing to provide a written supply agreement if requested
8. Acquiring, using or disclosing the supplier's trade secrets
9. Carrying out (or threatening) commercial retaliation when a supplier exercises their rights under this Directive
10. Requiring a supplier to pay for the cost of customer complaints

Six further practises are banned unless they are provided for in clear and unambiguous terms in a supply agreement:

11. Returning unsold products to the supplier without paying for them
12. Charging a supplier for the stocking, displaying or listing of their products
13. Requiring a supplier to pay for the costs of promotions
14. Requiring a supplier to pay for advertising costs
15. Requiring a supplier to pay for marketing costs
16. Requiring a supplier to pay for the fitting out of premises

### **Who does the Directive cover?**

**This law covers the buying practices of businesses that purchase agri-food products:**

- If they are in a larger size category\* than their supplier and;
- If they are based in the EU or;
- If they are based outside the EU, but are purchasing from an EU supplier

This can include retailers, brands, processors, and even public bodies like local and national government departments.

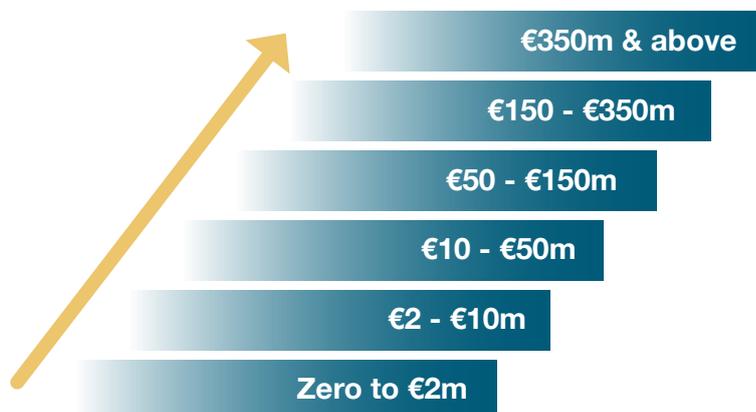
**Suppliers of agri-food products can access protection under this law:**

- If they are in a smaller size category (see over for size categories) than their buyer, and have an annual turnover of below €350m and;
- If they are based in the EU or;
- If they are outside the EU, but selling to an EU-based buyer

This might include farmers, processors and brands. Businesses in the middle of the supply chain will often be both buyers and suppliers.

These are the size categories, by annual turnover, into which businesses in the agri-food supply chain are grouped for the purpose of this Directive.

### Size categories, by annual turnover



### What products are covered?

The definition of *agri-food* used by this Directive is taken from Annex 1 of the Treaty on the Functioning of the European Union.<sup>4</sup> It is a comprehensive list of agricultural products including foodstuffs, tobacco, wine and flowers. The Directive also covers products that, while not listed, either incorporate or are derived from a product on the list. Processed foods are therefore covered.

### Other key features

The Directive requires each Member State to set up an enforcement body which will ensure compliance with the law. This can either be an entirely new body or a pre-existing entity such as a competition authority or regulator.

Suppliers and producer organisations have the right to complain to the relevant enforcement authority if they feel that they have been subjected to an unfair trading practice. Complaints may be addressed to the enforcement authority in either the supplier's country or the buyer's country. Non-profit organisations also have the right to complain to the enforcement authority, if the non-profit organisation can demonstrate that it has a legitimate interest and is acting on the behalf of a supplier.

<sup>4</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:07cc36e9-56a0-4008-ada4-08d640803855.0005.02/DOC\\_45&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:07cc36e9-56a0-4008-ada4-08d640803855.0005.02/DOC_45&format=PDF)

## Article-by-article

The Directive is made up of 15 articles:

Article 1	Specifies which businesses and business relationships all within the scope of the Directive
Article 2	Provides definitions for terms that appear elsewhere in the text, including 'buyer', 'supplier' and 'agricultural and food products'
Article 3	Lists prohibited practices, which are split into 'black practices' (banned whatever the circumstances) and 'grey practices' (banned unless they have been unambiguously agreed in advance by the supplier and the buyer)
Article 4	Requires each Member State to designate an enforcement authority to tackle unfair trading practices
Article 5	Lays out how national-level enforcement authorities should operate including specifying who has the right to make a complaint and that complaints should be treated confidentially
Article 6	Lays out what powers the enforcement authority should hold, including the power to properly investigate suspected illegal practices and the power to fine buyers who are found guilty
Article 7	Allows for Member States to promote alternative dispute resolutions mechanisms, such as mediation, to settle cases between suppliers & buyers
Article 8	Requires enforcement authorities to collaborate with each other and with the European Commission
Article 9	Clarifies that Member States can introduce national rules that are stricter and more comprehensive than those in the Directive
Article 10	Requires each enforcement authority to publish an annual report. This should include a description of its activities, the number of complaints received, the number of investigations opened, and the number of investigations closed (and their outcomes)
Article 11	Specifies which EU Committee is to be involved in modifying and adjusting the Directive
Article 12	Lays out that the European Commission shall evaluate the success of the Directive in 2025, and if appropriate present proposals for further legislation to tackle unfair trading practices
Article 13	Sets out that Member States must have transposed the Directive into national law by May 2021 and implemented that law by November 2021
Article 14	Specifies that the Directive shall enter into force on the fifth day after its publication in the Official Journal of the European Union (31st April 2019)
Article 15	Addresses the Directive to Member States

The European Commission's guidance document contains more information on the structure and content of the Directive.<sup>5</sup>

<sup>5</sup> [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/brochure-utp-directive\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/brochure-utp-directive_en.pdf)

## What can you do?

The Directive establishes a minimum set of rules that all EU Member States must transpose into national law. Civil society organisations, other relevant associations and food business operators can engage with this process by:

1. Ensuring the effective transposition and implementation of the Directive. Although the Directive establishes a shared minimum standard across the European Union, the transposition and implementation of the law will vary between Member States. This is appropriate given the differences in national context across the EU. However, it does mean that there may be attempts from governments or pressure groups to dilute the standards of the Directive.
2. Advocating for national laws that improve on the minimum standards of the Directive. Article 9(1) of the Directive specifies that *Member States may maintain or introduce stricter rules aimed at combating unfair trading practices than those laid down by this Directive*. The fact that the terms of the Directive need to be transposed into national law means that there will be a legislative process that provides civil society with an opportunity to advocate for stronger and more comprehensive measures that will more effectively support greater fairness in agricultural supply chains.

## 1. Ensuring the effective transposition and implementation of the Directive

Organisations looking to scrutinise and monitor the effectiveness of this Directive in tackling unfair trading practices in each Member State should engage with legislators and government officials on the following themes.

### Ensure a timely and consultative legislative process

Governments should be held to account for transposing the Directive into national law by 1st May 2021, and for those laws to have come into force by 1st November 2021. These are legal deadlines stipulated in the Directive.

While this Directive is not in force suppliers will remain exposed to abusive purchasing practices, so Member States should be encouraged to introduce a law as soon as possible.

Transposition should be preceded by a process of open consultation to allow civil society, businesses and the public to submit their views.

Annex 2 gives an overview of the timeline related to this Directive, including its approval process, entry into force, and subsequent reporting deadlines.

## **Design laws that complement the national context**

Most Member States have a pre-existing law or initiative aimed at tackling unfair trading practices. Laws should be built upon what already exists in each country to minimise confusion, duplication and inefficiency while also guaranteeing that national laws meet the minimum standards laid out by the Directive.

## **Designate a competent enforcement authority**

Member States are required to designate an enforcement authority. This may be a new body or a pre-existing regulator and should be independent of influence from the large food businesses that it is intended to regulate. It should be sufficiently resourced to perform its function effectively and should be conferred with the appropriate powers as laid out in Article 6.1 of the Directive, including the authority to impose fines and other effective penalties.

## **Ensure that the powers of the enforcement authority are effective and appropriate**

The enforcement authority should use its powers to tackle unfair trading practices effectively. Many of these practices are highly profitable, and so fining powers must be set at an appropriately high level to serve as a sufficient disincentive. When other penalties are used they should be equally effective.

The European Commission's Impact Assessment lists the fining powers that already exist in several Member States for the purpose of tackling unfair trading practices.<sup>6</sup> Differences between Member States are significant, and the highest fines will have the most deterrent effect. Fines should be calculated based on objective criteria, and enforcement authorities should communicate with each other to establish a common approach (see suggested amendment in Annex 1).

## **Take steps to encourage the reporting of unfair trading practices**

An enforcement authority will only be as effective as the proportion of unfair trading practices that are reported as complaints. Suppliers are often reluctant to make complaints since they do not want to be identified as the source of a complaint and risk commercial retaliation from their buyer.

Member States should therefore ensure that the transposed law, and the implementation of that law, ensures that complainants are not identified against their will, as per Article 5.3 of the Directive.

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<sup>6</sup> See p174-175 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018SC0092&from=EN>

Member States should also ensure that the transposed law protects the right of non-profit organisations to make complaints on behalf of suppliers, as per Article 5.2 of the Directive, since this might lead to a greater volume of unfair trading practices being reported.

### **Take particular steps to guarantee access for non-EU suppliers**

Non-EU suppliers are likely to be vulnerable to unfair trading practices but are less likely to have the information or legal support to contact the enforcement authority of the country where their buyer is established.

Enforcement authorities should therefore take steps to proactively engage with non-EU suppliers, making sure that they are aware of the protections that the Directive offers and that they are confident in how to raise a complaint. This might include attending international food trade fairs; communicating with embassy representatives, trade attachés and supplier associations from key non-EU supplier countries; or the translation of communications materials into the languages of the main non-EU supplier countries. If a non-EU country has a public regulator focused on food supply chains (as is the case in South Korea and Kenya), the enforcement authority should explore ways of working together to support fairer international supply chains.

Furthermore, in order to successfully tackle unfair trading practices in non-EU supply chains, enforcement authorities must track and publish the volume of complaints that they receive from domestic and non-EU suppliers, to invite external scrutiny. This latter point is not explicitly mentioned under Article 9 of the Directive, which covers the reporting of Member States.

### **Appropriate use of alternative dispute resolution**

Article 7 leaves open the possibility that countries might promote mediation and other forms of alternative dispute resolution rather than imposing penalties on buyers breaking the law by using unfair trading practices.

Member States should be encouraged to consider whether promoting alternative methods of dispute resolution is appropriate in each individual case. Fining powers might be the best way to drive a long-term and systemic improvement in the fairness of trading practices.

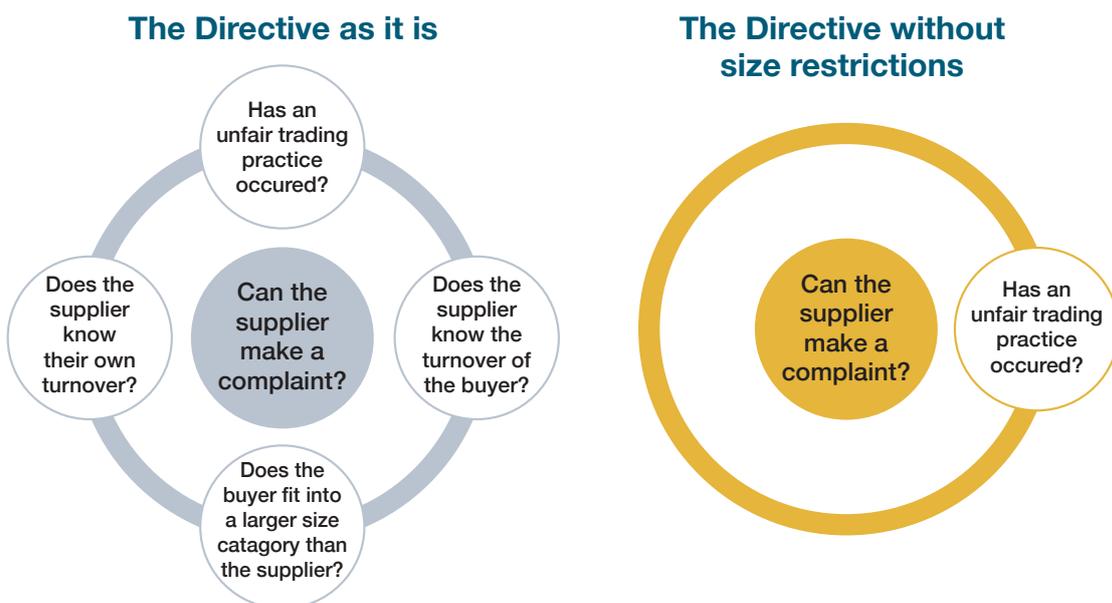
## 2. Advocating for national laws that improve on the minimum standards of the Directive

The Directive sets out the minimum standard, and countries are free to go further than this minimum within the boundaries of EU law. Some suggestions for where individual Member States can build on the Directive to ensure an effective law are included below, with specific wording for amending the Directive included at Annex 1.

### Expand the scope of the Directive, covering all suppliers regardless of relative sizes

The Directive applies to business relationships where the buyer is in a larger size category than the supplier. This is because the Directive is designed based on the assumption that size is a proxy for market power. This is not always true – for example, a smaller buyer based in an EU country may have greater market power, and therefore the ability to apply unfair trading practices than their larger supplier based in a developing country and trading in a perishable commodity.

Additionally, suppliers may not easily be able to find out the annual turnover of their buyer. This means they may not be able to determine if they have been subjected to an unfair trading practice in the eyes of the law. The complex size stipulations at Article 1.2 of the Directive are a clear barrier to suppliers making a complaint. An unfair trading practice is unfair regardless of the sizes of the companies involved, and the obvious solution is to extend the scope of the Directive so that it applies to all business-to-business relationships. This is summarised in the below diagram.



## Introduce a comprehensive ban of UTPs

The Directive defines 16 practices that are judged to be unfair trading practices, including many of the most common and harmful UTPs. However, the specificity of this list means that powerful buyers (such as supermarkets or big brands) could simply find other ways to buy that, while not specifically banned, are nonetheless blatantly unfair on the supplier. The danger is that regulation will always be one step behind commercial practice.

The solution is for national legislation to introduce a comprehensive ban on all Unfair Trading Practices based on the definition in Article 1.1 of the Directive (*'practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another'*). National enforcement authorities could publish guidance on what sort of practices should be outlawed and could have the flexibility to add new practices.

This approach is taken in the UK: the 2009 Groceries Supply Code of Practice mandates 'fair and lawful dealing' and includes examples of the kinds of practices that will be judged illegal under this definition.<sup>7</sup>

## Improve the list of UTPs

Regardless of the introduction of a comprehensive ban, based on the principle set out above, the list of 16 banned practices should be improved to incorporate other specific unfair trading practices, clarifying that they are banned. Some suggestions for additional defined unfair trading practices are:

- **Protect suppliers against retaliatory de-listing**  
Suppliers in the agricultural sector are typically reluctant to complain of unfair or illegal treatment by a buyer owing to concerns that they might be de-listed. While Article 3.1h) protects suppliers from *'acts of commercial retaliation'*, it may be difficult to objectively define what this might entail. The vulnerable position of many suppliers would be strengthened by a provision requiring a buyer to communicate all de-listing decisions with reasonable notice and by citing genuine commercial reasons.
- **Ban the use of 'double-race auctions'**  
'Double-race auctions' are mechanisms used by buyers to place suppliers against each other in short-notice online auctions, in which they are incentivised to offer their produce

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<sup>7</sup> Article 2 of the Groceries Supply Code of Practice reads: A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues. (<https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice>)

at the lowest possible price. Suppliers will often offer at a price below the cost of production, with inevitably negative effects on the farmers and workers in the groceries supply chain. The use of these auctions has been linked to widespread human rights abuses in the Italian tomato sector.<sup>8</sup> Although suppliers are not technically obliged to take part in such auctions, when it is their only way of securing a market for their produce they are left with little choice.

- **Ban unfair trading practices that arise due to economic dependence, regardless of the content of a supply agreement**

The Directive includes six unfair trading practices that are banned *‘unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer’*. However, a comparatively weaker supplier might feel compelled to sign an agreement with a more powerful buyer, regardless of whether that agreement is truly in the supplier’s interest. Therefore, these six practices (the ‘grey UTPs’) should be banned outright if any supply agreement is struck where a supplier is economically dependent on a buyer. The concept of economic dependence exists in some jurisdictions, for example in German law where it is defined as a situation in which 20% of a suppliers’ sales go to a single buyer.

- **Ban below-cost selling where the loss is borne by the supplier**

Selling products below cost-price leads to a devaluing of products by consumers and is an important driver of poor working conditions and low income in food supply chains. While retailers may want to sell stock below cost-price as a marketing mechanism, or because of shelf-life and therefore food waste considerations, retailers should always ensure that suppliers receive payment covering at least cost of production.

### **Expand who has the right to make a complaint to the enforcement authority**

Under the current wording of the Directive, the right to submit a complaint to the enforcement authority lies with suppliers, supplier associations (including Producer Organisations) and non-profit organisations operating on the behalf of suppliers.

As previously explained, suppliers are often reluctant to complain about the practices of their buyers, however unfair or illegal, due to fear of commercial repercussions. It is therefore welcome that the Directive allows other organisations to make complaints on the behalf of suppliers, since this means that illegal practices are more likely to be exposed and tackled. However, the limits that

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<sup>8</sup> <https://policy-practice.oxfam.org.uk/publications/human-suffering-in-italys-agricultural-value-chain-620479>

the Directive places on which other organisations may submit a complaint are unnecessary; the law should be framed in such a way that any organisation with relevant information about unfair trading practices can bring it to the attention of the enforcement authority. Complaints should be assessed based on whether an illegal practice has occurred, rather than who submitted the complaint.

### **Reporting should be as useful and complete as possible**

Article 10 stipulates that *'Member States shall send to the Commission a report on unfair trading practices'* which should contain *'all relevant data on the application and enforcement of the rules under this Directive'*. Specifically, the report should contain a description of each closed investigation and its outcome. While these elements are important in the context of this annual report, additional elements should be added to the reporting, including:

- Whether the UTPs included in Article 3 of the Directive require updating
- Whether the level of cooperation between national enforcement authorities is adequate for tackling unfair trading practices conducted by multi-national buyers
- Whether the complaints mechanism is functioning well
- The volume of complaints received from domestic suppliers against non-EU suppliers

## **How should civil society organisations and other like-minded organisations engage with the legislative process?**

To engage with the process of transposing the national law, civil society organisations and other like-minded organisations may take the following steps:

- Network with other national organisations that may also be involved with advocating on the UTPs Directive. These may include farming unions, NGOs and agricultural businesses.
- Find out which government ministry is in charge of transposition (it may be the agriculture or business/financial affairs departments)
- Identify and contact the Government minister and leading official, asking for a meeting as soon as possible to discuss how they plan to transpose the Directive
- Resources and contact details for other interested organisations may be found at: <https://fairtrade-advocacy.org/our-work/eu-policies/unfair-trading-practices/>

However, having legislation in place is only part of the story. There are a number of further activities that organisations can undertake to ensure that this legislation is as effective as possible in supporting supply chain fairness.

Civil society organisations and other relevant associations, as well as food business operators, might consider the following areas of work:

- Ensuring that suppliers, both in the EU and overseas, are aware of the existence of the law, are informed of their legal protections, and understand how to make a complaint
- Supporting a supplier to make a complaint to the enforcement authority
- Networking with civil society organisations around Europe to share information and insights into how the Directive is being implemented in various countries
- Contributing to the review of the effectiveness of the Directive (which must be published by 1st November 2025)

## Other policy areas to be aware of

The Unfair Trading Practices Directive is not the only EU initiative aimed at strengthening the position of producers and suppliers in the food supply chain. Organisations that are interested in working on unfair trading practices may also be interested in tracking developments in **market transparency**, **regulation of buying alliances** and **competition law**.

### ● Market transparency

The European Commission publishes representative market prices for a number of key products at national and town level.<sup>9</sup> This means that suppliers are informed of the going rate for their goods, giving them greater power in their commercial discussions. At the time of writing this document, the European Commission has published a draft implementing regulation exploring the publication of additional price information, including the price that retailers pay their direct suppliers for finished products; this has the potential to further strengthen the negotiating position of many suppliers. While the information may not be 100% accurate, it will provide an important overview of price trends.<sup>10</sup>

### ● Regulation of buying alliances

The European Parliament have called on the Commission to conduct an analysis into the extent and effects of ‘buying

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<sup>9</sup> For example: [https://ec.europa.eu/agriculture/sites/agriculture/files/dashboards/olive-oil-dashboard\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/dashboards/olive-oil-dashboard_en.pdf)

<sup>10</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5108370\\_en#isc-2019-03111](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-5108370_en#isc-2019-03111)

alliances' on fairness in agricultural supply chains. These are groups of retailers buying as a single customer in order to exert greater market power over their suppliers, and are currently outside the scope of the Unfair Trading Practices Directive. Forthcoming European Commission research may provide a basis for further campaigning.

## ● Competition law

EU competition law shapes business-to-business relationships, and therefore can play a significant role in supporting fairer supply chains. Fair Trade Advocacy Office and others are pushing the EU to reform competition policy by:

- Providing guidelines to companies that would allow discussion of sustainability issues without transgressing competition law
- Expanding the interpretation of consumer welfare used by competition authorities to include social and environmental sustainability dimensions
- Taking sustainability concerns into account when making competition-related decisions

More information is available from the Fair Trade Advocacy Office's website.<sup>11</sup>

## Background information & resources

Organisations may find the following documents helpful when working on the Unfair Trading Practices Directive.

- This guide, along with further resources including a list of useful contacts, is available at the Fair Trade Advocacy Office website: <https://fairtrade-advocacy.org/our-work/eu-policies/unfair-trading-practices/>
- The full text of the Directive as published in the Official Journal of the European Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1557237500431&uri=CELEX:32019L0633>
- A brochure produced by the European Commission: [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key\\_policies/documents/brochure-utp-directive\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/brochure-utp-directive_en.pdf)
- A list of unfair trading practices is available in Appendix 1 (p.101-102) of Oxfam's report Ripe for Change – Ending Human Suffering in Supermarket Supply Chains (2018): <https://www.oxfam.org/en/research/ripe-change>



<sup>11</sup> <http://fairtrade-advocacy.org/our-work/eu-policies/competition-law/>

## Annex 1: Suggested amendments

The text of the Directive itself cannot be amended. However, as the Directive is transposed into the national law of EU Member States there may be scope for improvements to be made. The below table includes amendments that, if incorporated, would ensure that national law tackles unfair trading practices as effectively and comprehensively as possible.

Intention	Relevant section of Directive	Suggested amended text for Member States to bring into law
Expand the scope of the Directive, covering all suppliers regardless of relative sizes	Delete Article 1.2; insert new text	<b>The Directive applies to unfair trading practices which occur in relation to sales of agricultural and food products. This Directive applies to sales where either the supplier or the buyer, or both, are established in the Union. This Directive also applies to services, insofar as explicitly referred to in Article 3, provided by the buyer to the supplier. This Directive does not apply to agreements between suppliers and consumers.</b>
Introduce a comprehensive ban of UTPs	Amend Article 1.1	With a view to combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another, this Directive <del>establishes a minimum list of prohibited</del> <b>prohibits</b> unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.
	Insert new text at Article 2.6	<b>(6) ‘Unfair trading practices’ means practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another</b>
	Amend Article 3.1	Member States shall ensure that <del>at least all the following</del> unfair trading practices are prohibited, <b>including the below specific practices</b>
Improve the list of UTPs: De-listing	Insert into Article 3.1	<b>(j) A supplier is de-listed without reasonable notice, written explanation of the decision and without genuine commercial reasons</b>
Improve the list of UTPs: Double-race auctions	Insert into Article 3.1	<b>(h) A buyer uses double-race auctions to drive down prices. These are not regulated and as such fail to ensure the transparency of negotiations, pricing and bidders in the purchasing of agricultural and food products of EU-certified quality and origin as well as noncertified products.</b>

*continued over*

<p><b>Improve the list of UTPs: Economic dependence</b></p>	<p>Amend text of Article 3.2</p>	<p>Member States shall ensure that the following trading practices are prohibited, if they are not agreed in clear and unambiguous terms at the conclusion of the supply agreement or in a subsequent agreement between the supplier and the buyer <b>during the validity of the supply agreement, or if they are the result of an abuse of the supplier's economic dependence on the buyer which enabled the buyer to impose those terms</b></p>
<p><b>Improve the list of UTPs: Below-cost selling</b></p>	<p>Insert into Article 3.2</p>	<p><b>(g) a buyer sells agricultural and food products below the purchase price as per invoice, less the proportional part of the agreed discounts included in the invoice, plus the transport costs and the taxes charged on the transaction, as a marketing mechanism, and the loss or cost is ultimately borne by the supplier</b></p>
<p><b>Expand who has the right to make a complaint to the enforcement authority</b></p>	<p>Amend Article 5.1</p>	<p><del>Suppliers may address complaints</del> <b>Complaints may be addressed</b> either to the enforcement authority of the Member State in which the supplier is established or to the enforcement authority of the Member State in which the buyer that is suspected to have engaged in a prohibited trading practice is established.</p>
	<p>Replace the text at Article 5.2</p>	<p><del>Producer organisations, other organisations of suppliers and associations of such organisations, shall have the right to submit a complaint at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by a prohibited trading practice. Other organisations that have a legitimate interest in representing suppliers shall have the right to submit complaints, at the request of a supplier, and in the interest of that supplier, provided that such organisations are independent non-profit-making legal persons.</del> <b>Any individual or organisation shall have the right to submit a complaint with relevant information pertaining to a suspected unfair trading practice.</b></p>
<p><b>Introduce objective criteria for fines</b></p>	<p>Insert into Article 6.1e)</p>	<p>(e) the power to impose, or initiate proceedings for the imposition of, fines and other equally effective penalties and interim measures on the author of the infringement, in accordance with national rules and procedures. <b>Fines should be calculated according to objective criteria to ensure that they are effective, proportionate and dissuasive. Such criteria might include: the turnover of the infringer, the benefits accrued from the UTP by the infringer, the number and status of the victims of the UTPs, and the repetition of offenses by a buyer. Enforcement authorities should work with the Commission and their counterparts in other Member States to establish common methodologies.</b></p>

*continued over*

<p><b>Strengthen reporting requirements</b></p>	<p>Insert into Article 10.1</p>	<p><b>Member States shall ensure that their enforcement authorities publish an annual report about their activities falling within the scope of this Directive, which shall, inter alia, state the number of complaints received and the number of investigations opened or closed during the previous year. For each closed investigation, the report shall contain a summary description of the matter, the outcome of the investigation and, where applicable, the decision taken, subject to the confidentiality requirements laid down in Article 5(3). The report shall specifically contain the number of complaints received from domestic suppliers and the number of complaints received from non-EU suppliers.</b></p> <p><b>The report shall also specifically contain the view of the enforcement authority on the following questions:</b></p> <ul style="list-style-type: none"> <li>• <b>Whether the UTPs included in Article 3 of the Directive require updating</b></li> <li>• <b>Whether the level of cooperation between national enforcement authorities is adequate for tackling unfair trading practices conducted by multi-national buyers</b></li> <li>• <b>Whether the complaints mechanism is functioning well</b></li> </ul>
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## Annex 2: Timeline

<p>17th April 2019</p>	<p>The final text of the Directive is agreed by the European Parliament and European Council</p>
<p>25th April 2019</p>	<p>The Directive is published in the Official Journal of the European Union</p>
<p>1st May 2021</p>	<p>Date by which each Member State is required to have passed the laws and regulations necessary to comply with the Directive</p>
<p>1st Nov 2021</p>	<p>Date by which each Member State is required to have applied the laws and regulations necessary to comply with the Directive</p> <p>Also the date by which the European Commission is required to have presented an interim report on the transposition and implementation of the Directive to the European Parliament and European Council</p>
<p>15th March 2022 (and 15th March of each year thereafter)</p>	<p>Date at which each Member State will be required to send the European Commission a report on the application and enforcement of the Directive</p>
<p>1st Nov 2025</p>	<p>Date by which the European Commission is required to have conducted an evaluation of the Directive, and to have presented a report to the European Parliament and the European Council</p>



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